

Remarks

Claims 6-17 are in the case. Claims 1-5 are cancelled by the present amendment. New claims 6-17 are presented. No new matter has been added by the amendments. Support for claims 14-16 is found in US 6,368,335 for a cannula bender, which was specifically incorporated by reference in the original specification. Reconsideration is respectfully suggested.

Priority Objection

Applicant's claim for benefit of the filing date of a provisional patent application was not granted on grounds that inventor named in this application did not file the provisional patent application from which priority is claimed. Applicant hereby withdraws its claim of priority. Applicant has deleted applicable material from ¶0001 of the specification.

Claim Rejections – 35 USC § 102

Method Claims 4-5 were rejected under 35 U.S.C. 102(e) as being anticipated by Pakter et al. (U.S. 6,592,559). The Examiner takes the position that Pakter et al. discloses a needle assembly or instrument including an elongate bendable tubular delivery member 12 and an elongate bendable flexible penetrating member 11 made of a superelastic alloy, disposed within member 12, the assembly being used for delivering bone graft material (Figs. 2 and 3, col. 4, col. 6 and col. 7). The Examiner further takes the position that the method steps of claims 4 and 5 are performed during normal use of the Pakter et al. instrument for delivering bone graft material.

It is respectfully suggested that Pakter does not anticipate the claimed method. Pakter makes no mention or suggestion of delivering bone graft material through a needle, much less a bendable needle. Pakter also describes a needle having a preformed bend.

Paktar teaches away from the claimed method by specifically discussing a bone graft material, but then failing to suggest delivery of the bone graft substitute material through the Paktar needle. Paktar states:

It is contemplated that the present invention can be used for a percutaneous corpectomy, a procedure which involves fusion and decompression of two or more vertebrae by first aspirating tissue from the damaged vertebral bodies, then introducing a carbon fiber composite cage packed with *bone graft material* to serve as scaffolding for the affected vertebrae. Once the cage is properly positioned, methyl methacrylate or another suitable material is infused into the vertebral bodies to secure the prosthesis.

(Col. 4, lines 14-23; emphasis added). Thus, Paktar first discusses the use of a cage packed with bone graft material as a scaffold, and then immediately describes injecting bone cement to secure the prosthesis. No where else does Paktar discuss the use of bone graft material.

Further, Paktar is directed exclusively to a needle having a preformed bend, rather than a needle that is selectively bent intraoperatively. See e.g. Paktar Col. 2, Lines 40-58, Col. 3, Lines 38-50 Col. 6, Lines 2-10, and Col. 6, lines 44-67, all of which describe a needle having a "preformed bend." (e.g. "The infusion needle 11 as defined herein, comprises one or more needle cannulae having a preformed bend 16."). The preformed bend is the key feature of Paktar's embodiment, because it allows the Paktar needle to be inserted into the patient's body inside of a straight cannula, and then to automatically assume the bent configuration once the straight cannula is backed away from the distal end of the needle. The pre-bent feature allows the Paktar needle to carry out several particular functions, which are described, for example, at Paktar, Col. 2, lines 49-58. Accordingly, it is respectfully submitted that the Commissioner has not established a prima facie case of anticipation of the claimed invention.

Conclusion

Applicant suggests claims 6-17 are now in a condition for allowance, and respectfully requests issuance of a notice of allowance. If the Examiner concludes that a telephone interview would facilitate examination of this application, undersigned would welcome such a conference. This response has been filed with a request for a one month extension of time. It is believed that no further extension of time is therefore required, but if an extension is required, applicant hereby requests an appropriate extension of time. It is further believed that no fees are due, but if any fees or credits are due, the Commissioner is authorized to charge or deposit them to Deposit Account No. 502795.

Respectfully submitted,



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